WP(C) 3191/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI
JUDGMENT & ORDER (oral)

1. Heard Mr. L. P. Sharma, learned counsel for the petitioner, Mr. P. C. Gayan, learned Central Govt. Counsel and Mr. A. K. Sarkar, learned counsel appearing for the respondent Nos.3 and 4. Also heard Mr. G. Soren, learned Govt. Advocate, Assam.

2. The petitioner, an employee of the National Textiles Corporation, applied for and was granted voluntary retirement under the modified voluntary retirement scheme in force in the respondent Corporation. By letter dated 21.5.2007, followed by a subsequent letter dated 26.6.2007, the petitioner was asked to come and receive his payment on account of the VRS dues. The said payment, however, was to be made subject to production of clearance certificates by the petitioner from the Stores, Civil, Land and Bank Loan sections of the respondent Corporation. According to the petitioner, all the other sections except the Civil Section have issued the necessary clearance certificates. However, the Civil Section of the Corporation has withheld the said certificate on the ground that the petitioner is in occupation of a quarter allotted to him by the Corporation which he is required to vacate and until and unless the said accommodation is vacated and handed over to the respondent Corporation clearance certificate will not be issued so as to entitle the petitioner to receive the payment due to him.

3. The petitioner has averred and stated in the writ petition, particularly in paragraph 7, that he is in occupation of the land measuring 1 katta 10 lechas covered by Annual Patta No.88/517 situated in village Chandrapur, Mouza- Panjabari, District - Kamrup, Assam. According to the petitioner, he has been in occupation of the said land since the year 1972 and is presently living therein by constructing a thatched house. The petitioner claims the aforesaid property to be his self-acquired property. The said fact is disputed by the Corporation in the affidavit filed and in the oral arguments offered by the learned counsel, Sri Sarkar. According to the respondent Corporation, the accommodation in possession of the petitioner belongs to the Company and, in fact, it is Company Quarter No. NTC/AIA/SPG. Pointing out paragraph 5.9 of the modified Voluntary Retirement Scheme in force the learned counsel Sri Sarkar has argued that unless and until the aforesaid property of the Company is handed over the petitioner will not be entitled to payment of his retirement dues.

4. Much arguments have been advanced by the learned counsels for the parties in support of their respective contentions that the property in question belongs to either of them. While Sri Sharma, learned counsel for the petitioner, has been emphatic in submitting, by relying on the documents enclosed to the writ petition including the revenue receipts, that the property in question belongs to the petitioner, Sri Sarkar, learned counsel for the respondent Corporation, has vehemently contended, by referring to the averments made in the counter-affidavit filed on behalf of the Corporation, that the property claimed by the petitioner belongs to the Corporation and the same is Company owned property situated on land belonging to the Corporation.

5. The above being the bone of contention between the parties the Court is of the view that in the present proceeding under Article 226 of the Constitution it will be wholly incorrect on the part of the Court to enter into the controversy raised by and on behalf of the parties and attempt to arrive at any conclusion on the veracity of the rival claims. Not only such an exercise will be wholly inappropriate to a proceeding under Article 226, the Court is of the view that the said mater would not be fit for adjudication as the law has provided a distinct and definite forum for adjudication of the rival claims to immovable property. The Court, therefore, declines to go into the aforesaid controversy raised.

6. However, that would not be the end of the matter. The petitioner is a re

tired employee of the Corporation who had served long years in a lowly paid post. The petitioner contends that the total of VRS dues that would be payable to him would in the region of rupees four lakhs. On the basis of the materials placed before the Court it cannot be affirmatively said, at this stage, that any default has been committed by the petitioner in terms of clause 5.9 of the VRS scheme inasmuch as whether the property belongs to the Corporation or to the petitioner is an issue that has been left unanswered by the Court and has to be determined by the appropriate forum. In such circumstances, the right of the respondent Corporation to the property claimed by the petitioner is yet to be established. The withholding of the VRS dues of the petitioner, therefore, has to be understood by the Court as an act of taking of necessary precaution and/or security by the respondent Corporation to ensure that the petitioner while parting ways with the Corporation by final acceptance of the VRS dues, clears all his obligations and dues to the Corporation. Understanding the actions of the respondent Corporation in the above manner the Court is of the view that withholding of entire of the dues of the petitioner will not be justified. Even if half of the said dues i.e. 50% is withheld the same can act as a sufficient guarantee or security on the part of the petitioner.

7. I, therefore, close this writ petition leaving it open to the parties to approach the appropriate forum for adjudication of their respective claimed rights to the property in question. However, it is made clear that the respondent Corporation will forthwith disburse 50% of the VRS dues to the petitioner and will be entitled to withhold the balance 50% until the title/ownership to the property is decided by a competent forum.

8. Writ petition shall stand disposed of in terms of the above.